

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1931

PORTLAND GENERAL ELECTRIC
COMPANY,

Complainant,

vs.

ALFALFA SOLAR I LLC , DAYTON
SOLAR I LLC, FORT ROCK SOLAR 1
LLC, FORT ROCK SOLAR II LLC, FORT
ROCK SOLAR IV LLC, HARNEY SOLAR I
LLC, RILEY SOLAR I LLC, STARVATION
SOLAR 1 LLC, TYGH VALLEY SOLAR I
LLC, WASCO SOLAR I LLC

Defendants.

ERRATA
RULING

DISPOSITION: MOTION TO STAY PROCEEDINGS GRANTED IN PART AND
DENIED IN PART

I. PROCEDURAL HISTORY

On January 25, 2018, PGE filed the instant complaint seeking Commission resolution of a dispute “relating to the interpretation of ten form standard power purchase agreements executed throughout 2016.”¹

On February 22, 2018, Alfalfa Solar I LLC, Dayton Solar I LLC, Fort Rock Solar I LLC, Fort Rock Solar II LLC, Fort Rock Solar IV LLC, Harney Solar I LLC, Riley Solar I LLC, Starvation Solar I LLC, Tygh Valley Solar I, LLC, and Wasco Solar I, LLC (defendants or NewSun QFs) filed a motion to dismiss the proceeding due to the pendency of a federal district court case on the same subject matter. PGE filed a response in opposition on March 9, 2018.

¹ PGE Complaint and Request for Dispute Resolution at 1 (Jan 25, 2018).

By a stipulated procedural schedule of the parties, NewSun QFs agreed that they would file an answer to the PGE complaint within ten days after any adverse ruling by the Commission on its motion to dismiss.² On May 23, 2018 the Commission issued Order No. 18-174 denying NewSun QFs' motion to dismiss. Thus, under the terms of the parties' stipulated procedural schedule, the NewSun QF answer is due the next business day following Saturday, June 2, 2018, *i.e.*, Monday, June 4, 2018.

II. POSITIONS OF THE PARTIES

In support of its motion to stay proceedings and extend time to file an answer, NewSun QFs state that Order No. 18-174 was entered seven days prior to oral argument scheduled in the federal proceeding on May 30, 2018. NewSun QFs disagree with the Commission's order and renew their request to stay the proceedings before the Commission because they intend to continue to pursue the federal court complaint. NewSun QFs state that they need to focus their resources on the immediate need to prepare for oral argument. Defendants also ask for an extension of time to file an answer to an indefinite date: fourteen days after the presiding federal judge rules on PGE's motion to dismiss.

PGE notes that it had previously agreed to allow defendants to delay filing an answer until after the Commission had ruled on their motion to dismiss, and that Order No. 18-174 did not include a stay of proceedings pending the resolution of any matters before the federal court. PGE argues that defendants have had four months to prepare an answer, but that PGE is willing to agree to a one-week extension in light of the need to prepare for oral argument.

III. DISCUSSION

Defendants should be granted an extension of one week in which to file their answer. In Order No. 18-174, the Commission found that, while it did not have exclusive jurisdiction, it had concurrent jurisdiction and that there were several reasons enunciated by the courts that would favor having the Commission, rather than the courts, address the matters presented. Consequently, at page 5 of its order, the Commission recommended that the federal court abate its proceedings pending the outcome of the matters before the Commission. NewSun QFs ask for the opposite relief: that the Commission abate *its* proceedings, pending the outcome of oral argument before the federal district court judge.

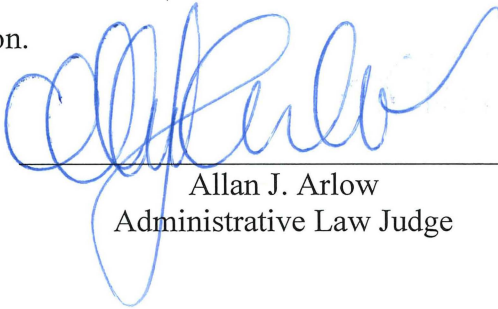
² See *PGE Response to Defendants' Motion to Stay Proceedings* at 10 (Feb. 9, 2018) and *Defendants' Request for Leave to Reply and Reply to Portland General Electric Company's Response to Defendants' Motion to Stay Proceedings* at 3 (Feb. 13, 2018).

Other than their disagreement with the Commission's decision in Order No. 18-174, NewSun QFs provide no compelling reasons to delay yet again the resolution of the matters raised in the complaint and there is considerable uncertainty as to when any ruling by the federal district court judge would be issued. Consequently, a further suspension of the case for an unknown duration would unduly delay the proceedings and burden the record in this matter.

IV. RULING

The Renewed Motion to Stay Proceedings and Extend Time to File an Answer is granted to the extent that the defendants may file their answer to the PGE complaint no later than June 11, 2018. The motion is denied in all other respects.

Dated this 4th day of June, 2018, at Salem, Oregon.



Allan J. Arlow
Administrative Law Judge